



**Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001**

In the Matter of:

YVONNE WRIGHT,
Petitioner.

HUDOA No. 11-H-NY-LL61
Claim No. 7804568660A

DECISION AND ORDER

Yvonne Wright ("Petitioner"), was notified that, pursuant to 31 U.S.C. §§ 3716 and 3720A, the Secretary of the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary") intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD.

On September 23, 2011, Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). The administrative judges of the Office of Appeals have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. §§ 17.152 and 17.153. As a result of Petitioner's hearing request, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on September 28, 2011. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), 2.)

Background

On May 5, 1998 Petitioner executed and delivered a Note to United Mortgage Investors, Inc. in the amount of \$15,000, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat., ¶ 2; Sec'y Stat., Ex. A, Note.) Subsequently, on May 8, 1998, United Investors Inc., assigned the Note to Norwest Home Improvement, Inc. (Sec'y Stat., Ex. A, p. 3.) Petitioner failed to make payment on the Note as agreed. (Sec'y Stat., ¶ 4.) Consequently, and in accordance with 24 C.F.R. § 201.54, Norwest Home Improvement, Inc. assigned the Note to the United States of America. (*Id.*) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*; Sec'y Stat., Ex. B, Assignment.)

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. (Sec'y Stat., ¶ 5.) The Secretary alleges Petitioner remains in default on the Note and is justly indebted to the Secretary in the following amounts:

- (a) \$9,550.32 as the unpaid principal balance as of November 30, 2011;
- (b) \$167.16 as the unpaid interest on the principal balance at 3% per annum through November 30, 2011; and
- (c) interest on said principal balance from December 1, 2011 at 3% per annum until paid.

(Sec'y Stat., Ex. C, Declaration of Gary Sautter, Acting Director, Asset Recovery Division, Financial Operations Center, of HUD ("Sautter Decl."), ¶ 4.)

A Notice of Intent to Collect by Treasury Offset ("Notice") dated February 17, 2003 was sent to Petitioner. (Sec'y Stat., ¶ 6; Sautter Decl. ¶ 5.) Petitioner did not request a hearing in response to the Notice, nor did she enter into a voluntary repayment plan as a result of receiving the Notice. (Sec'y Stat. ¶ 7.) Consequently, HUD referred Petitioner's debt to the U.S. Department of the Treasury for inclusion in the Treasury Offset Program. (*Id.*)

Intermittently, between 2005 and 2011, HUD has received payments totaling \$9,431.00 as a result of Treasury's offset of Petitioner's tax refunds. (Sec'y Stat., ¶ 8; Sautter Decl., ¶ 6.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. In these cases, Petitioner bears the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.152(b); Juan Velazquez, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

Petitioner does not dispute the existence of the debt in this case. On the contrary, Petitioner admits, "I did originally borrow the money (a little naïve at the time as to the nature of this type of this loan and its default consequences, having not anticipated default) to make improvements to a home I had purchased..." (Pet'r's November Letter, filed November 29, 2011.)

Petitioner raises the claim of financial hardship, stating, "I am a single mother of 4 children, unfortunately, I have not been able to regain financial status, or stability, equal to, or better than, how it was when I had taken the loan from yourselves." (*Id.*) Petitioner also notes that she is "unable to make any other payments due to a lack of income." (*Id.*)

Although this Court acknowledges Petitioner's financial circumstances, the Court also notes that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *In re Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986). The law

provides that “unfortunately, in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable.” *In re Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *In re Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *In re Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). Furthermore, no regulation or statute currently exists that permits financial hardship to be considered as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, I find that financial hardship cannot be considered as a defense in this case as the debt owed by Petitioner is sought to be collected by means of administrative offset.

Petitioner also offers that “another more effective way to reduce the debt could be worked out.” (Pet’r’s Letter, Nov. 29, 2011.) Petitioner requested that this Court “forgive” Petitioner’s debt to HUD “since it was not foreseeable that [Petitioner’s] financial situation would change so drastically.” (Pet’r’s Hr’g Req.) This Court is not authorized to “forgive” the debt in this case, nor may it extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD. The Court’s authority in these cases permits only a determination of whether the debt is enforceable and past due, and in what amount. 24 C.F.R. § 17.152(c). Should Petitioner wish to negotiate repayment terms with HUD, she may choose to discuss this matter with Lester J. West, Director HUD Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

Because Petitioner has acknowledged the existence and enforceability of the debt in this case, and has failed to raise an otherwise valid defense in support of her position, the Court finds the debt to be past due and legally enforceable in the amount alleged by the Secretary.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**.

It is hereby **ORDERED** that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner.



Vanessa L. Hall
Administrative Judge

January 26, 2012